

EXHIBIT "B"

1 Imran F. Vakil, Esq. (Bar No. 248859)
ivakil@nexiolaw.com
2 Angelo E. Mishriki, Esq. (Bar No. 305069)
amishriki@nexiolaw.com
3 **NEXIO, PC**
245 Fischer Avenue
4 Suite C3
Costa Mesa, CA 92626
5 Phone: (949) 478-6830
Facsimile: (949) 478-1275
6 *Attorneys for Plaintiff, Sream, Inc.*

7 Bradford J. Dozier SBN 142061
ATHERTON & DOZIER
8 1313 N. Center Street
Stockton, CA 95202
9 Telephone: (209) 948-5711
Attorney for Defendant
10 *EMAD SAEED KASSEM MOHSEN*

11 Raul O. Pinochet
15662 Amar Rd.
12 La Puente, CA 91744
Phone: (909) 291-5340
13 Defendant In Pro Per

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15 **UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA**

16

17 SREAM, INC, a California corporation,

18 Case No. 5:16-cv-00103-JGB-KK

19 Plaintiff,

20 v.

21 **FRCP 26(f) JOINT REPORT**

22 PANG YUN SIK A/K/A YUN SIK PANG;
RAUL PINOCHET; EMAD SAEED
23 KASSEM MOHSEN; and DOES 1-10
INCLUSIVE,

24 Date: **April 04, 2016**
Time: **11:00 am**
Place: **US District Court**
3470 Twelfth Street
Riverside, California 92501
Courtroom 1

25 Defendants.

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29 **FRCP 26(f) REPORT**

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure (“FRCP”), Local Rule 26-1, and the Court’s Order of December 28, 2015, Plaintiff, Sream, Inc. (“**Sream**”), and Defendants, Emad Saeed Kassem Mohsen (“**Mohsen**”) and Raul Pinochet (“**Pinochet**”), (collectively “the Parties”), upon conferring on March 10, 2016, submit the following joint report.

I. PRELIMINARY STATEMENT

The following report is prepared by three of the four litigants. An Entry for Default against Defendant Pang Yun Sik a/k/a Yun Sik Pang (“**Sik**”) will be or has been contemporaneously requested by Sream’s Counsel on March 09, 2016 [Dkts. 18-19]. As used herein, the term “**Defendants**” shall refer to Mohsen and Pinochet.

II. BRIEF SYNOPSIS OF FACTS AND CLAIMS [ORDER NO. A]

A. Plaintiff’ Contentions

Headquartered in Germany since 1995, Mr. Martin Birzle d/b/a RooR (“**RooR**”) is an award-winning designer and manufacturer of smoker’s products. RooR products are widely recognized and highly acclaimed for its ornate and innovative products. For nearly two decades, RooR distinguished itself as the premiere manufacturer of water pipes because of its unwavering use of quality materials, and focus on scientific principles to facilitate a superior smoking experience, which have resulted in a significant following and appreciation amongst consumers in the United States. To protect its hard work and investment, RooR has applied for and received at least three federally registered trademarks (the “**RooR Marks**”), the earliest of which dates back to March 1999.

Since at least 2011, Plaintiff Sream, Inc. (“**Sream**”) has been the exclusive licensee of the RooR Mark in the United States. Under the terms of its agreement, Plaintiff has manufactured advertised, marketed, and distributed water pipes in association with the RooR Marks. Sream has also been granted all enforcement rights to the RooR Marks.

Recently, Sream was made aware that unscrupulous entities were producing counterfeit products bearing the RooR Marks, and several shops in Southern California were selling counterfeits. Sream hired an independent investigator to locate retail shops and distributors selling such counterfeit RooR products. On October 3, 2013 and September 23, 2015, Sream's investigator made evidentiary purchases from Defendant Raul Pinochet and Defendant Emad Saeed Kassem Mohsen, respectively.¹

Upon such discovery, Sream filed suit against both Defendants seeking redress for (1) Federal Trademark Infringement [15 U.S.C. § 1114]; (2) Counterfeiting [15 U.S.C. § 1117]; (3) False Designation Of Origin [15 U.S.C. §1125(a)]; (4) Unfair Competition [Cal. Bus. & Prof. Code § 17200]; and (5) Common Law Unfair Competition.

B. Defendant Pinochet's Contentions

Defendant Pinochet purchased the product alleged in the complaint from one of two different wholesalers. Defendant assumed the wholesaler was selling him a fully licensed product. At no time did Defendant intend to sell an unlicensed product (Innocent Intent).

C. Defendant Mohsen's Contentions

[INSERT]

III. SUBJECT MATTER JURISDICTION [ORDER NO. B]

This is an action principally arising under the Lanham Act (15 U.S.C. §§ 1051 *et seq.*), wherein Plaintiff seeks redress for alleged infringement of federally registered trademarks, as well as the sale of counterfeit products being such federally registered marks. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(a) (trademark) and 28 U.S.C. § 1338(b) (unfair competition), and pendant jurisdiction over the remaining claims (state and common law unfair competition) pursuant to 28 U.S.C. § 1367.

¹ Sream also identified a third defendant (Pang Yun Sik, a/k/a Yun Sik Pang) who has not responded to this action, and for whom a Clerk's Entry of Default will be or has been contemporaneously requested.



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2 **IV. LEGAL ISSUES [order no. C]**

3 **A. Plaintiff's Description of the Principal Legal Issues:**

4 Plaintiff contends that there are five principal legal issues: (1) Whether Defendants
5 infringed the federally registered RooR Marks and/or imported/sold counterfeit water pipes
6 bearing the RooR Marks; (2) The degree of intent and/or reckless indifference involved in
7 said infringement and counterfeiting; (3) causation of harm; (4) scope of damages under all
8 applicable statutes as pled; and (5) the viability of any potential affirmative defenses.

9 **B. Defendant Pinochet's Description of the Principal Legal Issues**

10 Defendant Pinochet – Innocent Intent.

11 **C. Defendant Mohsen's Description of the Principal Legal Issues**

12 [INSERT]

13 **V. PARTIES AND NON-PARTY WITNESSES [ORDER NO. D]**

14 **A. Plaintiff's Statement**

15 At the present time, Plaintiff intends to depose and/or call to testify the following
16 categories of persons at trial: (1) Plaintiff's principal and sales agents; (2) Plaintiff's
17 licensor (if available); (3) Plaintiff's investigator; (4) Defendants' sales agents and/or
18 marketing agents that sold the counterfeit products in dispute; and (5) Defendants'
19 accountants; (4) Defendants' customers who purchased the counterfeit products in dispute.
20 Plaintiff is unaware as to whether some of the above identified categories of persons are
21 presently employed by Defendants, and if not, whether they will be called as third party
22 witnesses.

23 **B. Defendant Pinochet's Statement**

24 Defendant Pinochet may conduct written discovery, interrogatories, document
25 production, request for admissions.

26 **C. Defendant Mohsen's Statement**

27 [INSERT]



1 **VI. DAMAGES [ORDER NO. E]**

2 **A. Plaintiff's Statement**

3 Sream contends that Defendants, and each of them, are liable for damages as
4 follows:

Claim	Damages sought
Federal Trademark Infringement [15 U.S.C. § 1114];	<ul style="list-style-type: none"> • Defendants' profits, actual damages, enhanced profits, and damages, costs, and reasonable attorney's fees under 15 U.S.C. §§ 1114 and 1116 • Treble damages under 15 U.S.C. §1117 • Injunctive Relief and an order requiring destruction of all infringing materials in each Defendant's possession under 15 U.S.C. §1118
Counterfeiting [15 U.S.C. § 1117];	<ul style="list-style-type: none"> • Statutory damages of up \$2,000,000 per mark infringed under 15 U.S.C. §§ 1117(c)(2). • In the alternative, Plaintiff is entitled to injunctive relief and to recover Defendants' profits, actual damages, enhanced profits, and treble damages, costs, and reasonable attorney's fees under 15 U.S.C. §§ 1117(b)
False Designation Of Origin [15 U.S.C. §1125(a)];	<ul style="list-style-type: none"> • Same as Federal Trademark Infringement, if found willful (alternative theory)
Unfair Competition [Cal. Bus. & Prof. Code § 17200]	<ul style="list-style-type: none"> • Injunctive relief • Restitution
Common Law Unfair Competition.	<ul style="list-style-type: none"> • Injunctive relief and damages. <i>See Los Defensores, Inc. v. Gomez</i>, 223 Cal.App.4th 377 (Cal.App. 2 Dist., 2014).

19 **B. Defendant Pinochet's Statement**

20 Defendant is not seeking damages at this time.

21 **C. Defendant Mohsen's Statement**

22 [INSERT]

23 **VII. INSURANCE [ORDER NO. F]**

24 Sream is not aware of any insurance coverage.

25 **VIII. ADDITIONAL PARTIES AND ANTICIPATED MOTIONS [L.R. 26-1(b),**
L.R. 26-1(e), AND ORDER NO. G]

26 At this time, Sream does not anticipate amending pleadings or adding parties.
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1 However, Plaintiff and the served Defendants reserve the right to add additional parties
2 within ninety (90) days of the filing of this report should discovery reveal the need to add
3 said additional parties, or in the event they are otherwise appropriate parties.

4 **IX. MANUAL FOR COMPLEX LITIGATION [L.R. 26-1(a) AND ORDER NO.**
5 **H]**

6 Sream believes that this action should not be handled as a “complex case” under the
7 Manual for Complex Litigation.

8 **X. STATUS OF DISCOVERY [ORDER NO. I]**

9 Discovery is anticipated to commence contemporaneous with the Filing of the instant
10 report. While requests for informal documentary requests were made prior to the filing of
11 this Report, no documents have been exchanged.

12 **XI. DISCOVERY PLAN, PRIVILEGES and esi [FRCP 26(f)(3)(A)-(F) AND**
13 **ORDER NO. J]**

14 Sream believes that discovery should take place pursuant to the Federal Rules of
15 Civil Procedure and should not be limited or conducted in phases, except as provided by
16 the Federal Rules of Civil Procedure. Discovery will generally be needed on all of the
17 allegations set forth in the Complaint, the allegations and contentions set forth in
18 Defendants’ Answers or otherwise asserted by Defendants, and the allegations and
19 contentions contained in any future motion filed before the discovery cutoff. In Plaintiff’s
20 view, liability is incontestable, and Plaintiff’s principal focus will be on the extent to which
21 Defendants engaged in the sale of counterfeit products, and the degree of willfulness
22 involved.

23 No changes need to be made to the form or requirement for disclosures under Rule
24 26(a). Sream believes that discovery should be conducted according to the Federal Rules
25 of Civil Procedure and the local rules for the United States District Court for the Central
26 District of California unless otherwise specified herein, modified by stipulation or ordered
27 by the Court.

28 Finally, Sream anticipates preparing and executing a two-tier protective order

1 pursuant to FRCP 26(c) which shall be presented to the Court in due course.
2

3 **XII. FACT DISCOVERY [FRCP 26(f)(3)(B) AND ORDER NO. K]**

4 Sream believes that fact discovery should be conducted pursuant to the Federal Rules
5 of Civil Procedure and that the final day for the completion of fact discovery should be
6 Monday, September 19, 2016. Written Discovery has commenced and is believed to
7 continue through the discovery cutoff.

8 **XIII. EXPERT DISCOVERY [FRCP 26(f)(3)(B) and L.R.26-1(f) AND ORDER**
9 **NO. L]**

10 Sream recommends that expert discovery should be conducted pursuant to the
11 Federal Rules of Civil Procedure, as follows:

- 12 1. **Expert Disclosures:** Monday, October 3, 2016
13 2. **Rebuttal expert disclosures:** Monday, October 24, 2016
14 3. **Expert discovery cutoff:** Monday, November 07, 2016

15 **XIV. CASE SCHEDULE AND DISPOSITIVE MOTIONS [L.R. 26-1(b) AND**
16 **ORDER NO. M]**

17 Sream recommends the final schedule be set as follows:

- 18 1. **Dispositive motion cutoff (hearing):** Monday, December 19, 2016
19 2. **Final pre-trial conference:** Monday, February 06, 2017
20 3. **Trial:** Tuesday, February 21, 2017

21 Sream may file a motion for terminating sanctions if Defendants further refuse to
22 cooperate. Sream anticipates filing a motion for summary judgment after the close of
23 percipient discovery, but before the motion cutoff date. Summary Judgment is anticipated
24 to resolve issues or liability, with the damages remaining for trial. At this time, it is
25 unascertained whether the Parties will be filing Motions in Limine, or their intended scope.

26 **XV. SETTLEMENT AND ADR PROCEDURES [L.R. 26-1(c) AND ORDER NO.**
27 **N]**

28 Settlement discussions have already begun. Sream request settlement procedure

1 number three set forth in Local Rule 16-15.4 (Private Mediation). Sream anticipates that,
2 in all events, the settlement procedure must be completed by September 23, 2016, or as
3 otherwise deemed appropriate.

4 Defendant Pinochet requests procedure one (1) or two (2) unless Plaintiff agrees to
5 pay for the private mediator.

6 **XVI. ESTIMATED NUMBER OF JURY TRIAL DAYS AND TRIAL-RELATED**
7 **MATTERS [L.R. 26-1(d) AND ORDER NO. O]**

8 Sream estimates that the trial will take four (4) days to present both Plaintiff's and
9 Defendants' case in chief. Further, Sream does not believe that there is any need for
10 severance, bifurcation or other ordering of proof. Sream believes that trial shall be by jury.
11 Sream estimates the need to call five to six witnesses.

12 **XVII. TRIAL COUNSEL [ORDER NO. P]**

13 *For Plaintiff:* Imran F. Vakil and Angelo E. Mishriki

14 *For Defendant Mohsen:* Bradford J. Dozier

15 *For Defendant Raul Pinochet:* Raul Pinochet, In Pro Per

16 **XVIII. INDEPENDENT EXPERT [ORDER NO. Q]**

17 Sream does not anticipate or recommend the use of an independent expert or master.

18 **XIX. TIMETABLE [ORDER NO. R]**

19 Please see the Exhibit appended to this report.

20 **XX. OTHER ISSUES [ORDER NO. S]**

21 None.

22 **XXI. MAGISTRATES**

23 Sream does not consent to having a Magistrate Judge preside over all proceedings in
24 this case.

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7 Dated: March 10, 2016

NEXIO, PC

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By: /s/ Angelo Mishriki.

Angelo Mishriki, Esq.
Attorney for Plaintiff,
Sream, Inc.

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Dated: March 10, 2016

ATHERTON & DOZIER

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Dated: March 10, 2016

By: 
Raul O. Pinochet
Defendant in Pro Per

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EXHIBIT "A"

1 Case No.	2 5:16-cv-00103-JGB-KK
3 Case Name:	4 Sream, Inc. v. Pang Yun Sik, et al.

Hearings	Plaintiff Sream's Request	Defendant Mohsen's Request	Defendant Pinochet's Request	Court Order
[X] Jury Trial [] Court Trial (Tuesday at 9:00 a.m.) Length: <u>4</u> Days	2/21/17		2/21/17	
Final Pretrial Conference [L/R/ 16] and Hearing on Motions <i>in Limine</i> (Monday 2 weeks before trial)	2/6/17		2/6/17	
Last Date to Conduct Settlement Conference	9/23/16		9/23/16	
Last Date to Hear Non-Discovery Motions (Monday at 9:00 a.m.)	12/19/16		12/19/16	
All Discovery Cut-Off (including hearing all discovery motions)	11/7/16		11/7/16	
Expert Disclosure (Rebuttal)	10/24/16		10/24/16	
Expert Disclosure Initial	10/03/16		10/03/16	
Last Date to Amend Pleadings of Add Parties	6/13/16		6/13/16	

ADR [L.R. 16-15] Settlement Choice [See Section XV above re Settlement Choice]

[] Attorney Settlement Officer Panel

[] Private Mediation

[] Magistrate Judge